

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1333 H STREET, N.W., SUITE 200, WEST TOWER  
WASHINGTON, DC 20005

TOLLING ORDER

January 24, 2003

FORMAL CASE NO. 962, IN THE MATTER OF THE IMPLEMENTATION OF  
THE DISTRICT OF COLUMBIA TELECOMMUNICATIONS COMPETITION  
ACT OF 1996 AND IMPLEMENTATION OF THE TELECOMMUNICATIONS  
ACT OF 1996, Order No. 12642

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") hereby tolls the 30-day statutory deadline for issuing a decision on Verizon Washington, DC Inc.'s ("Verizon DC") Application for Partial Reconsideration and Clarification of Order No. 12610 ("Verizon DC Reconsideration");<sup>1</sup> AT&T Communications of Washington, D.C. L.L.C.'s ("AT&T") Application for Partial Reconsideration ("AT&T Reconsideration");<sup>2</sup> and the Application for Reconsideration ("OPC Reconsideration") of the Office of People's Counsel ("OPC").<sup>3</sup> The Commission also grants the Motion of AT&T for Enlargement of Time ("AT&T Motion") to file a response to Verizon DC's Reconsideration.<sup>4</sup> Therefore, the Commission's Order on the parties' Applications for Reconsideration is due on March 4, 2003, and AT&T's response to Verizon DC's Reconsideration is due on January 27, 2003.

---

<sup>1</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996, Verizon Washington, DC Inc.'s Application for Partial Reconsideration and Clarification of Order No. 12610 ("Verizon DC Reconsideration"), filed January 3, 2003.*

<sup>2</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996, AT&T Communications of Washington, D.C. L.L.C.'s Application for Partial Reconsideration ("AT&T Reconsideration"), filed January 6, 2003.*

<sup>3</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996, Application for Reconsideration of the Office of the People's Counsel ("OPC Reconsideration"), filed January 6, 2003.*

<sup>4</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996, Motion of AT&T Communications of Washington, D.C. L.L.C. for Enlargement of Time ("AT&T Motion"), filed January 10, 2003.*

## II. BACKGROUND

2. On January 29, 2001, Verizon DC filed its cost studies for UNEs and the wholesale discount rate.<sup>5</sup> The Commission then established a procedural schedule for resolving the UNE and resale discount rate issues in Order No. 11959. On April 26, 2001, Verizon DC filed a Motion to Suspend the Procedural Schedule and Request for Expedited Ruling (“Verizon DC Motion to Suspend”).<sup>6</sup> Verizon DC proposed to replace the January 29 Cost Studies with new cost studies by July 16, 2001.<sup>7</sup> In Order No. 12009, the Commission granted Verizon DC’s request to submit new cost studies by July 16, 2001, and revised the procedural schedule accordingly.<sup>8</sup>

3. On July 16, 2001, Verizon DC filed revised cost studies.<sup>9</sup> Verizon DC also filed a motion to delete the January 29 Cost Studies from the record,<sup>10</sup> which the Commission denied in Order No. 12179 because of the continuing relevance of the January 29 Cost Studies in this proceeding.<sup>11</sup> AT&T and OPC filed intervenor testimony responding to Verizon DC’s July 16 Cost Studies on October 9, 2001.<sup>12</sup> Subsequently,

---

<sup>5</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996 Overview of Unbundled Network Element Costs and Resale Discount (“Verizon DC January 29 Cost Studies”),* filed January 29, 2001.

<sup>6</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996,* Verizon Washington DC, Inc.’s Motion to Suspend the Procedural Schedule and Request for Expedited Ruling, filed April 26, 2001.

<sup>7</sup> Verizon DC Motion to Suspend at 2-3.

<sup>8</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996,* Order No. 12009, rel. May 21, 2001.

<sup>9</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996,* Verizon Washington DC, Inc.’s Revised Unbundled Network Element and Wholesale Discount Rate Cost Studies and Testimony (Verizon DC’s July 16 Cost Studies”), filed July 16, 2001.

<sup>10</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996,* Verizon Washington DC, Inc.’s Motion to Withdraw its January 29, 2001 Cost Studies (“Verizon DC Motion to Withdraw”), filed July 16, 2001.

<sup>11</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996,* Order No. 12179, rel. September 7, 2001.

<sup>12</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996,* Direct Testimony of AT&T (“AT&T Direct Testimony”), filed October 9, 2001 and Direct Testimony and Exhibits of the Office of the People’s Counsel of the District of Columbia (“OPC Direct Testimony”), filed October 9, 2001.

on January 11, 2002, Verizon DC, and, in a joint filing, AT&T and Covad Communications Company ("Covad") jointly ("AT&T/Covad") filed rebuttal testimony.<sup>13</sup> Because Verizon DC filed additional cost studies in its Rebuttal Testimony, the Commission held a status conference on February 27, 2002, to modify the procedural schedule to permit the filing of surrebuttal testimony on the new information contained in Verizon DC's January 11 Rebuttal Testimony.<sup>14</sup> In lieu of submitting surrebuttal testimony, OPC filed a Pre-Hearing Brief ("OPC Pre-Hearing Brief") on March 28, 2002.<sup>15</sup> AT&T filed its surrebuttal testimony on April 23, 2002.<sup>16</sup>

4. By Order No. 12366, the Commission ordered the parties to perform five sensitivity analyses of the cost models using Commission-specified inputs.<sup>17</sup> Subsequently, in Order No. 12372,<sup>18</sup> the Commission added three scenarios to its list in response to Verizon DC's motion<sup>19</sup> requesting that the Commission add one scenario to

---

<sup>13</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Verizon Washington DC, Inc.'s Revised Unbundled Network Element and Wholesale Discount Rate Cost Studies and Rebuttal Testimony ("Verizon DC Rebuttal Testimony"), filed January 11, 2002. AT&T and Covad filed joint rebuttal testimony. *See, Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Rebuttal Testimony of Terry L. Murray on behalf of AT&T Communications of Washington D.C., Inc. and Covad Communications Company ("AT&T/Covad Rebuttal Testimony"), filed January 11, 2002.

<sup>14</sup> The decisions reached at the February 27, 2002, status conference were memorialized in *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Order No. 12342, rel. March 7, 2002.

<sup>15</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Motion for Leave to File a Pre-Hearing Brief of the Office of the People's Counsel ("OPC Motion for Leave"), filed March 28, 2002; Pre-Hearing Brief of the Office of the People's Counsel, filed March 28, 2002. The Commission granted OPC's Motion to accept the Pre-Hearing Brief in *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Order No. 12371, rel. April 4, 2002.

<sup>16</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, AT&T Communications of Washington D.C., Inc.'s Recurring Cost Surrebuttal Testimony, Attachment 2A-1 ("AT&T Surrebuttal Testimony"), filed April 23, 2002.

<sup>17</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Order No. 12366, rel. March 29, 2002.

<sup>18</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Order No. 12372, rel. April 4, 2002.

<sup>19</sup> *Formal Case No. 962, In The Matter Of The Implementation Of The District Of Columbia Telecommunications Competition Act Of 1996 And Implementation Of The Telecommunications Act Of 1996*, Verizon Washington DC, Inc.'s Motion for Modification, filed April 2, 2002.

the Commission's list. On April 15, 2002, OPC filed a partial sensitivity study on the loop costs.<sup>20</sup> AT&T filed its sensitivity study on April 16, 2002.<sup>21</sup> Verizon DC filed partial sensitivity studies on April 16, 2002, supplementing these studies with material submitted on April 24, 2002.<sup>22</sup>

5. The Commission held an evidentiary hearing on the unresolved UNE and resale discount rate issues on June 3 through 5, 2002. Verizon DC, OPC, AT&T, and Covad were represented at the hearing. In advance of the hearing, Verizon DC filed a Motion to Strike portions of AT&T's January 11 Rebuttal Testimony.<sup>23</sup> AT&T filed a response to the Motion to Strike on May 31, 2002.<sup>24</sup> The parties also filed a joint order of presentation for the hearings.<sup>25</sup> Additionally, the parties filed a Joint Stipulation Regarding Non-Recurring Cost Testimony.<sup>26</sup> During the hearing, Verizon DC and AT&T filed the stipulated testimony.<sup>27</sup> Subsequently, on June 21, 2002, Covad, OPC, and

---

<sup>20</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Office of the People's Counsel's Sensitivity Run Results, filed April 15, 2002. OPC supplemented this filing with an Errata filed on April 16, 2002. *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Errata, Sensitivity Run Results, filed April 16, 2002. The Commission calls these documents collectively "OPC's Sensitivity Study."

<sup>21</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, AT&T's Sensitivity Runs ("AT&T Sensitivity Study"), filed April 16, 2002.

<sup>22</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Verizon Washington DC, Inc.'s Proprietary Sensitivity Studies, filed April 16, 2002; Supporting Documentation for Verizon Washington DC, Inc.'s Sensitivity Studies, filed April 24, 2002. The Commission terms these documents collectively as "Verizon DC Sensitivity Study."

<sup>23</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Verizon Washington DC, Inc.'s Motion to Strike the Testimony of John. I. Hirshleifer, filed May 29, 2002.

<sup>24</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, AT&T Communications of Washington D.C., L.L.C. and Covad Communications Company Response to Verizon Washington DC, Inc.'s Motion to Strike ("AT&T Response"), filed May 31, 2002.

<sup>25</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Order of Presentation for Hearings in Formal Case No. 962 ("Joint Order of Presentation Motion"), filed June 3, 2002.

<sup>26</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Joint Stipulation Regarding Non-Recurring Cost Testimony ("Joint Stipulation"), filed May 31, 2002.

<sup>27</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Verizon Washington DC, Inc.'s Joint Stipulation Regarding Non-Recurring Cost Testimony Transcript

Verizon DC filed post-hearing briefs.<sup>28</sup> AT&T submitted its post-hearing brief on June 24, 2002, along with a motion to file out of time.<sup>29</sup> On July 1, 2002, these same parties filed post-hearing reply briefs.<sup>30</sup>

6. On November 18, 2002, the Commission required Verizon DC and AT&T to rerun their cost models with Commission-specified inputs and file the results with the Commission.<sup>31</sup> On November 26, 2002, Verizon DC and AT&T filed their results with the Commission.<sup>32</sup> On December 6, 2002, using the results of the sensitivity studies, the Commission issued Order No. 12610 ("UNE Order"), which established the resale discount rate, the cost of capital and depreciation rates, and unbundled network element ("UNE") rates in the District of Columbia.<sup>33</sup>

---

Pages and Data Request Response ("Verizon DC Stipulated Testimony"), filed June 3, 2002; AT&T Communications of Washington D.C., Inc.'s Documents for the Joint Stipulation Regarding Non-Recurring Cost Testimony ("AT&T Stipulated Testimony"), filed June 3, 2002.

<sup>28</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Initial Post-Hearing Brief of Covad Communications Company ("Covad Post-Hearing Brief"), filed June 21, 2002; Post-Hearing Brief of the Office of the People's Counsel ("OPC Post-Hearing Brief"), filed June 21, 2002; Post-Hearing Brief of Verizon Washington DC, Inc. ("Verizon DC Post-Hearing Brief"), filed June 21, 2002.

<sup>29</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Initial Brief of AT&T Communications of Washington D.C., LLC ("AT&T Post-Hearing Brief"), filed June 24, 2002; Motion of AT&T Communications of Washington D.C., LLC. For Leave to File Out of Time ("AT&T Filing Motion"), filed June 24, 2002.

<sup>30</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Reply Brief of AT&T Communications of Washington D.C., LLC ("AT&T Post-Hearing Reply Brief"), filed July 1, 2002; Reply Brief of Covad Communications Company ("Covad Post-Hearing Reply Brief"), filed July 1, 2002; Reply Post-Hearing Brief of the Office of the People's Counsel of the District of Columbia ("OPC Post-Hearing Reply Brief"), filed July 1, 2002; Post-Hearing Reply Brief of Verizon Washington DC, Inc. ("Verizon DC Post-Hearing Reply Brief"), filed July 1, 2002.

<sup>31</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Order No. 12601, rel. November 18, 2002.

<sup>32</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Letter to Sanford M. Speight, Acting Commission Secretary, from Michael A. McRae, Senior Attorney, AT&T Communications of Washington D.C., Inc. ("AT&T Rerun"), filed November 26, 2002; Verizon Washington DC, Inc.'s Results of its Model Re-runs Pursuant to Order No. 12601 ("Verizon DC Rerun"), filed November 26, 2002.

<sup>33</sup> *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Order No. 12610, rel. December 6, 2002.

### III. DISCUSSION

#### A. Applications for Reconsideration

7. On January 3, 2003, Verizon DC filed an Application for Partial Reconsideration and Clarification of Commission Order No. 12610.<sup>34</sup> Verizon DC maintains that the UNE Order rates do not allow it to recover its actual or forward-looking costs.<sup>35</sup> Verizon DC contends the Commission's UNE Order produces confiscatory rates that violate the Fifth Amendment of the United States Constitution.<sup>36</sup> Consequently, Verizon DC asserts the UNE Order needs to be reconsidered.<sup>37</sup>

8. On January 6, 2003, AT&T filed an Application for Partial Reconsideration of Commission Order No. 12610.<sup>38</sup> AT&T states that the Commission's UNE Order provides a "good first step toward the development of telecommunications competition" in the District.<sup>39</sup> Yet, AT&T asserts there are several key areas that the Commission must reconsider because these rates do not comport with TELRIC.

9. OPC also filed an Application for Reconsideration on January 6, 2003.<sup>40</sup> In support of its Application for Reconsideration, OPC argues the record supports a modification of the Commission's decision in two distinct areas. Specifically, OPC avers that the Commission should allocate the cost of the loop equally between voice and data service providers during linesharing and that the Commission should reject Verizon DC's resale discount cost study as flawed.<sup>41</sup>

10. Section 34-604(b) of the District of Columbia Code and Rule 140.1 of the Commission Rules of Practice and Procedure require that the Commission render a decision on reconsideration within 30 days.<sup>42</sup> The District of Columbia Court of Appeals, however, has held that for reasoned and deliberate consideration of applications for reconsideration the Commission may extend the statutory period.<sup>43</sup> Due to the complexity of the issues raised by the parties, the Commission needs sufficient time to

---

<sup>34</sup> Verizon DC Reconsideration at 1.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 9.

<sup>37</sup> *Id.* at 5.

<sup>38</sup> AT&T Reconsideration at 1.

<sup>39</sup> *Id.*

<sup>40</sup> OPC Reconsideration at 1.

<sup>41</sup> *Id.* at 2.

<sup>42</sup> D.C. CODE § 34-604(b) (2001 Ed.) and 15 DCMR § 140.1

<sup>43</sup> *See United States v. Public Service Commission*, 465 A.2d 829 (D.C. 1983)

consider the three Applications for Reconsideration pending before us. Moreover, Verizon DC's Application is approximately 134 pages long, and raises Constitutional claims.<sup>44</sup> For the above reasons, the Commission hereby extends the 30-day statutory deadline.

**B. AT&T's Motion for Enlargement of Time**

11. On January 10, 2003, AT&T filed a Motion for Enlargement of Time to respond to Verizon DC's Reconsideration.<sup>45</sup> While the Commission's Rules of Practice and Procedure ("Commission's rules") only allows five days for responses, AT&T states that it needs an additional two weeks.<sup>46</sup> Specifically, AT&T asserts that Verizon DC's Reconsideration is extremely lengthy and challenges virtually all of the Commission's UNE rates.<sup>47</sup> AT&T also avers that the number of issues raised by Verizon DC requires a more comprehensive response than is allowed by the normal response deadline.<sup>48</sup>

12. AT&T states that Covad supports its motion.<sup>49</sup> AT&T also states OPC indicates that it does not oppose AT&T's request for an additional two weeks.<sup>50</sup> Moreover, AT&T contends no other party to the proceeding will be prejudiced by the additional two weeks. Indeed, AT&T believes that its response will provide a more comprehensive record in this complex and important proceeding.<sup>51</sup>

13. Although parties are only permitted five days to respond to reconsiderations, the Commission determines that AT&T's Motion for Enlargement of Time should be approved. As stated previously, Verizon DC's Reconsideration is very lengthy and raises numerous technical issues. AT&T has been an active party in the instant proceeding, and it should have sufficient opportunity to file a comprehensive response to Verizon DC's Reconsideration. Moreover, the additional information will create a more complete record for the Commission's deliberation of Verizon DC's Reconsideration.

14. Finally, the Commission concludes that the additional two weeks will not prejudice any other party to the proceeding. AT&T has already contacted Covad and OPC, and neither party objects to AT&T's request. Because the Commission is also

---

<sup>44</sup> See e.g., Verizon DC Reconsideration at 2.

<sup>45</sup> AT&T Motion at 1.

<sup>46</sup> *Id.* citing 15 DCMR § 140 (1998).

<sup>47</sup> AT&T Motion at 1.

<sup>48</sup> *Id.* at 2.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

tolling the 30-day statutory deadline for issuing a decision on all three Applications for Reconsideration, granting AT&T request for two additional weeks does not delay our ruling on Verizon DC's Reconsideration.

**THEREFORE, IT IS ORDERED THAT:**

15. The 30-day statutory deadline for issuing a decision on Verizon Washington, DC Inc.'s Application for Partial Reconsideration and Clarification of Order No. 12610 is **TOLLED**;

16. The 30-day statutory deadline for issuing a decision on AT&T Communications of Washington, D.C. L.L.C.'s Application for Partial Reconsideration is **TOLLED**;

17. The 30-day statutory deadline for issuing a decision on the Application for Reconsideration of the Office of People's Counsel is **TOLLED**;

18. The Motion of AT&T Communications of Washington, D.C., LLC for Enlargement of Time is **GRANTED**;

19. The date by which the Commission will issue a decision on the three Applications for Reconsideration is **EXTENDED** to March 4, 2003.

**A TRUE COPY**

**BY DIRECTION OF THE COMMISSION:**

**CHIEF CLERK**

  
**SANFORD M. SPEIGHT**  
**ACTING COMMISSION SECRETARY**